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Supreme Court of the United States

October Term, 1975

No. 75-6289

INEZ MOORE,
Appellant,

vs.

CITY OF EAST CLEVELAND, OHIO,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF FOR APPELLEE IN OPPOSITION

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BRIEF FOR APPELLEE IN OPPOSITION

OPINIONS BELOW

The Supreme Court of Ohio filed no written opinion with its final judgment dismissing Appellant's appeal. The Ohio Supreme Court held that the case involved no substantial constitutional questions.

The decision of the Court of Appeals of Ohio, Eighth District, on the merits of the case is unreported, but is contained in Appellant's Appendix at pages 3A-11A.

JURISDICTION

The decision and final judgment of the Supreme Court of Ohio was filed on November 28, 1975. The jurisdiction of this court is invoked pursuant to Title 28 U.S.C. § 1257 (2).

QUESTIONS PRESENTED

1. Is there a substantial constitutional question where a legislatively established definition, under a municipal zoning ordinance, states that "a family may consist of one individual", when the said zoning ordinance and its definition have previously been held to be constitutional?

2. Is there a substantial constitutional question where a legislatively established zoning ordinance, which was enacted under the police power of a municipality and in the best interest of the health, safety, morals and welfare of the community, provides that "a family may consist of one individual"?

3. Is there a substantial constitutional question where a legislatively established zoning ordinance, which provides that "a family may consist of one individual", when Appellant fails to present any evidence, at the trial below, in support of her contention that the said zoning ordinance is unreasonable and arbitrary?

4. Does Appellant have proper standing to raise a constitutional question before this Court when said Appellant has failed to exhaust her administrative remedies?

ORDINANCES INVOLVED

ORDINANCES OF THE CITY OF EAST CLEVELAND

1351.02 Limitation on Occupancy

The occupancy of any dwelling unit shall be limited to one, and only one, family and to any authorized persons occupying such dwelling unit with such family.

Section 1341.08, Ordinance 6010, which defines family provides:

1341.08 Family

"Family" means a number of individuals related to the nominal head of the household or to the spouse of the nominal head of the household living as a single housekeeping unit in a single dwelling unit, but limited to the following:

(a) husband or wife of the nominal head of the household.

(b) unmarried children of the nominal head of the household or of the spouse of the nominal head of the household, provided, however, that such unmarried children have no children residing with them.

(c) father or mother of the nominal head of the household or of the spouse of the nominal head of the household.

(d) notwithstanding the provisions of subsection (b) hereof, a family may include not more than one dependent married or unmarried child of the nominal head of the household or of the spouse of the nominal head of the household and the spouse and dependent children of such dependent child. For the purpose of this subsection, a dependent person is one who has more than fifty percent of his total support furnished for him by the nominal head of the household and the spouse of the nominal head of the household.

(e) *a family may consist of one individual.*" (Emphasis added).

1311.02 Variances; Rules and Regulations

The Board of Building Code Appeals shall determine all matters properly presented to it and where practical difficulties and unnecessary hardships shall result from the strict compliance with or the enforcement of the provisions of any ordinance for which it is designated as the Board of Appeals, such Board shall have the power to grant variances in harmony with the general intent of such ordinance and to secure the general welfare and substantial justice in the promotion of the public health, comfort, convenience, morals, safety and general welfare of the City. The Board shall also have the power to adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of any ordinance for which it is designated as the Board of Appeals. (Ord. 5636. Passed 6-1-65.)

1311.03 Appeal Procedure

(a) Any person adversely affected by a decision of any City official made in the enforcement of any ordinance for which the Board of Building Code Appeals is designated as the Board of Appeals shall have the right to appeal to the Board of Building Code Appeals from such decision within ten days from the date notice of such decision was given or mailed to him, and to appear before the Board at a time and place fixed by the Board. Such appeal must be in writing. Failure to file a written appeal with the Board within the time prescribed shall constitute a waiver of the right of appeal. The Board shall have the power to approve, amend, modify or reverse any decision of such City official.

(b) Any person adversely affected by a decision of the Board of Building Code Appeals shall also have the right to appeal to the City Commission from such decision within ten days from the date notice of such decision was given or mailed to the appellant, and to appear before the City Commission at a time and place fixed by the City Commission. Such appeal must be in writing. Failure to file a written appeal with the City Commission within the time prescribed shall constitute a waiver of the right of appeal. The City Commission shall have the power to approve, amend, modify or reverse any decision of the Board. (Ord. 5636. Passed 6-1-65.)

STATEMENT OF THE CASE

The facts in the present case, as shown by the transcript of the proceedings in the East Cleveland Municipal Court, Case No. 162307 are as follows: Appellant, Inez Moore is the owner of a two family dwelling structure at 1354-56 Garfield in the City of East Cleveland. Raiford Williams, the City Housing Inspector, came before the Clerk of East Cleveland Municipal Court and swore out a complaint that on or about the 30th day of January, 1974, Inez Moore did unlawfully permit two families to occupy a single family dwelling unit of the structure at 1354-56 Garfield in violation of Section 1351.02 of Ordinance 6010 of the Ordinances of the City of Cleveland.

The Appellant was summoned to appear in the East Cleveland Municipal Court and did so appear. A plea of not guilty was entered and a Motion to Dismiss was subsequently filed, heard and denied. The Appellant was found guilty upon stipulation of defense counsel, that the said Appellant, John Moore, Sr., her son, John Moore, Jr.,

John Moore, Sr.'s son, Dale Moore, her son; and Dale Moore, Jr., the son of Dale Moore, inhabit the single dwelling unit here in question. By stipulating to a plea of guilty to a violation of Section 1351.02, Appellant conceded that the habitation of the dwelling by the above persons was in violation of Section 1351.02, Codified Ordinance 6010 of the Codified Ordinances of the City of East Cleveland.

There is no evidence in the record below that Appellant made an administrative appeal of the citation as provided for in Chapter 1311 of the Codified Ordinances of East Cleveland.

REASONS FOR DENYING APPELLANT'S APPEAL

1. There is no substantial constitutional question, where a legislatively established definition, under a municipal zoning ordinance states that "a family may consist of one individual," when the said ordinance and its definition have previously been held to be constitutional.

The case of *Belle Terre v. Boraas,* ..... U.S. ....., 94 S. Ct. 1536 (1974) involved a zoning ordinance of the Village of Belle Terre which defined the word "family". The definition in essence restricted a family to blood relatives and not more than two unrelated people living together. Six unrelated college students were living together in a house in a single family dwelling district. The owner of the house, Boraas, who was cited for a violation, contested the constitutional validity of the ordinance. Boraas raised numerous objections including the right to privacy and the right to travel. Justice Douglas, who is known as one of the staunch supporters of the absolutist theory concerning First Amendment rights, in writing the opinion of this

Court summarily dispensed with Boraas's arguments. To paraphrase Justice Douglas' statements at page 1540 of 94 S. Ct., there was no procedural disparity occasioned on some but not on others; the ordinance did not involve any fundamental right guaranteed by the Constitution including right to privacy and right of association. As Justice Douglas further stated:

> "We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable not arbitrary' (quoting *F. S. Royster Guano Co. v. Virginia,* 253 U. S. 412, 415, 40 S. Ct. 560, 561, 64 L. Ed. 989 and bears a rational relationship to a (permissible) state objective. *Reed v. Reed,* 404 U.S. 71, 76, 92 S. Ct. 251, 254, 30 L. Ed. 2d 225."

As to the contention of Appellee Boraas that if two unrelated people could constitute a family within the meaning of the ordinance, three or four should be also included, Justice Douglas stated that every line drawn by a legislature leaves some people out who might have been included; that it is an exercise of discretion left to the legislature not the judiciary. *Belle Terre v. Boraas,* ..... U.S. ....., 94 S. Ct. 1536, 1540 (1974).

Although the *Belle Terre* case dealt with unrelated persons, it is analogous to the present case since the question in both is the constitutional validity of an ordinance defining family. In both cases the legislative authority of the municipality has sought to promote the public welfare limiting the people who can dwell in a single family unit by defining the word family. Although Section 1341.08 of the ordinances of East Cleveland might seem more restrictive than the *Belle Terre* ordinance, it does

not limit the traditional family composed of the parents and unmarried children, but even goes beyond that standard. Thus the rationale of the *Belle Terre* case that there is no violation of fundamental rights, that the "rational relationship" test should be applied, and that there is no disparity created by the line drawn by the legislature which will not be interfered with by the judiciary, should also be applicable to this case.

The case of *Palo Alto Tenants Union v. Morgan,* 321 F. Supp. 908 (Fed. Dist. Ct. N.D. Calif. 1970), *affirmed* 487 F.2d 883 (1973) involved the constitutionality of an ordinance defining family as persons related by blood, marriage or legal adoption, or not more than four unrelated persons.

Although that case centered on the provision for four unrelated persons, it is analogous to the present situation in that the constitutionality of a restrictive definition of family by a zoning enactment is involved.

The plaintiff tenants in the *Palo Alto* case asserted the arguments of freedom of association and right to family privacy, claiming them to be fundamental rights under the constitution, and therefore only to be infringed upon by a showing of compelling state interest, 321 F. Supp. 908 at 910. The Court rejected the tenants' arguments and held,

> ". . . the ordinance rational within the meaning of the equal protection and due process clauses of the 14th Amendment." Id. at 912.

In discussing validity of zoning classification the court related that such,

> ". . . classifications have generally been upheld if any state of facts can be conceived which would render

> the legislative decision reasonable. *Dandridge v. Williams,* 397 U.S. 471, 90 S. Ct. 1253, 25 L. Ed. 2d 491 (1970)." *Id.* at 911.

It is true as asserted by Appellant that the Court in the *Palo Alto* case suggested that a law which barred traditional families from single family dwelling districts might be suspect, *Id.* 911. However, this is merely dicta and the court in this passage did not define "traditional family". Further, at page 912 of its opinion, the court stated that the average size of the traditional family is *less than* four people.

In summary, the *Palo Alto* and *Belle Terre* cases are analogous to the present case, since all three deal with the constitutionality of ordinances defining "family" for zoning purposes. The rejection of the free association, right of privacy and family privacy, fundamental interest, and the disparity in classification should also be applicable in the present case.

In the case of *City of East Cleveland v. Seaborn Hilson,* East Cleveland Municipal Court, Case No. 101,060, the defendant Hilson was found guilty of violating Section 1351.02, Ordinance 6010, as interpreted by Section 1341.08, Ordinance 6010, of the City of East Cleveland. The defendant appealed on the grounds that Section 1341.08 was unconstitutional due to vagueness and violation of the due process clause of the Fourteenth Amendment, as well as on the grounds that the judgment was not supported by the weight of the evidence. Although the Court of Appeals, Eighth District, Cuyahoga County, reversed, holding that the judgment was not supported by the weight of the evidence, the Court also held that Section 1341.08 was *not* unconstitutionally vague, and was not in violation of the Fourteenth Amendment. *Hilson v. City of East Cleve-*

land, Case No. 30544 (App. 1971). See Journal Entry in Book 40, pages 609, 610, journalized October 12, 1971, and corrected Journal Entry, Book 41, page 345, journalized October 17, 1971.

Even though there was no opinion written by the Court of Appeals in the *Hilson* case, the upholding of the constitutionality of Section 1341.08 in that case should be determinative in the present case. The applicability of the *Hilson* ruling to the present case should not be diminished by the fact that the Appellant here is relying more heavily upon an equal protection argument than due process of law. The test for the validity of a zoning enactment should still be the same—whether or not the ordinance is reasonable, not arbitrary, and related to the public health, safety and welfare. This is surely the test used by the Court of Appeals in the *Hilson* case in upholding the constitutional validity of Section 1341.08 of Codified Ordinances of the City of East Cleveland.

Section 1341.08 does not attempt to restrict the traditional family of parents and their minor children; rather it goes further than this allowing other blood relatives. To allow a municipality to enact and enforce an ordinance such as Section 1351.02 for single family dwelling zoning, which section appellant does not contest, and then to deny the municipality the right to enforce such ordinance by defining the word family as used in Section 1341.08, would be denying the effectiveness of single family dwelling zoning.

2. There is no substantial constitutional question, where a legislatively established zoning ordinance, which was enacted under the police power of a municipality, and in the best interests of the health, safety, morals and welfare of the community, provides that "a family may consist of one individual".

The rationale for Sections 1351.02 and 1341.08 of Codified Ordinance 6010 is readily apparent from the Charter of the City of East Cleveland and Section 1343.02, Ordinance 6010. Section 1 of the Charter of East Cleveland provides in part:

> "The inhabitants of the City of East Cleveland as its limits now are or may hereafter be, shall be a body politic incorporate by name of the City of East Cleveland, and as such shall have perpetual succession; . . . may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety and convenience and welfare of the inhabitants of the City and all nuisances and carrier thereof; *may regulate* the construction, height, and the material used in all *buildings* and the maintenance and *occupancy* thereof; . . . and may pass such *ordinances* as *may be expedient for maintaining and promoting* the peace, good government and *welfare of the City*, and for the performance of the functions thereof . . ." (Emphasis added)

Section 1343.02, Ordinance 6010, of the City of East Cleveland sets the purpose of the Housing Code which includes Sections 1351.02 and 1341.08:

> "1343.02 PURPOSE.
>
> Within the scope of this Housing Code as hereinafter defined, the purpose of this Housing Code is: to establish minimum standards necessary to make all dwell-

ing structures safe, sanitary, free from fire and health hazards, and fit for human habitation and beneficial to the public welfare; to establish minimum standards governing the maintenance of dwelling structures in such condition as will not constitute a blighting or deteriorating influence on the neighborhood and the community; to protect property values and to maintain the character and appearance of the community and neighborhoods within the community; to fix responsibilities for owners and occupants of dwelling structures with respect to sanitation, repair and maintenance; . . . ."

It is clearly apparent from the above quoted provisions of the Charter of East Cleveland and Section 1343.02, that the enactment and enforcement of Sections 1351.02 and 1341.08 are in the best interests of the community, to further the health, safety and welfare of the citizens of East Cleveland.

In addition, the limiting of the number of families in a single dwelling unit helps alleviate the congested parking and traffic problem in East Cleveland; more families generally mean more automobiles. Further, the burden on the school system of East Cleveland is apparent; if more than one family is allowed to live in a single family dwelling unit, the Board of Education will be burdened with a disproportionate number of students as compared to the revenue from real estate taxes generated to provide funds for the school system. Moreover, responsibility as to ownership is fixed for enforcement purposes.

It should also be noted that in the case of *Nolden v. East Cleveland City Commission*, 12 Ohio Misc. 205, 232 N.E.2d 421 (App. 1966) the Court of Common Pleas of Cuyahoga County upheld Section 1351.03, Ordinance 6010, entitled Habitable Floor Area.

As noted by the Court of Common Pleas in the *Nolden* case at page 210 of 12 Ohio Misc.:

"There is no question but that the purposes of the housing code: fire safety, sanitation, health, crime prevention, maintenance of property, neighborhood, and community are mothers of public welfare, and are today well within the scope of the police power. In the recent case of *Reid v. Cleveland Heights*, 119 Ohio App. 67 (1963), the Cuyahoga County Court of Appeals held that the desire to maintain a 'high character of community development' is in the public interest and contributes to the general welfare."

It is obvious that the rationale of the above statement applies equally to Section 1341.08 since both 1341.08 and 1351.03 are directed to the same purpose as stated in Section 1343.02 and the Charter of East Cleveland.

Even though persons residing in a single family dwelling may not violate the person per square feet requirement of 1351.03, a situation such as the present one could arise where more than one family is inhabiting a single family dwelling. Therefore, Section 1341.08 is needed to prevent such multiple family habitation in a single family dwelling, to prevent overcrowding, traffic and parking congestion, an undue burden on East Cleveland's school system; the diminution of the property value and character of the neighborhood; and to fix responsibilities for enforcement purposes; all of which are proper exercises of the police power for the public welfare of the community.

Finally, a single family dwelling zoning which has been long recognized as constitutional, would be meaningless if the municipality could not effectively enforce it by measures such as Section 1341.08, Ordinance 6010, of the City of East Cleveland.

3. There is no substantial constitutional question, where a legislatively established zoning ordinance which provides that "a family may consist of one individual", when the Appellant fails to present any evidence, at the trial below, in support of her contention that the said ordinance is unreasonable and arbitrary.

The courts have consistently held that the strong presumption of validity applicable to legislative acts in general also applies to zoning ordinances. *State ex rel. River Grove Park Inc. v. City of Kettering, et al.*, 118 Ohio App. 143, 149, 193 N.E.2d 547 (App. Montgomery County, 1962), citing *Curtiss v. City of Cleveland*, 170 Ohio St. 127 (1959). Also see *Cleveland Trust Co. v. Village of Brooklyn*, 92 Ohio App. 351, 359, 110 N.E.2d 440 (App. Cuyahoga County, 1952).

The test of whether a zoning regulation is valid and constitutional is whether it is reasonable and not arbitrary, and has a substantial relation to the public health, safety and welfare. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S. Ct. 114 (1926). Also see *Nectaw v. City of Cambridge*, 277 U.S. 183, 48 S. Ct. 447 (1928). As stated by the Court of Appeals for Cuyahoga County in the case of *Pure Oil Division v. Brook Park*, 26 Ohio App. 2d 153, 154-155, 269 N.E.2d 853 (1971):

> "The underlying principle in determining the validity of all zoning enactments is whether or not that ordinance passed under the state's police power is related to the safety, health, and welfare of the community." See *Euclid v. Amber Realty Co.* (1926), 272 U.S. 365.

The courts have not been restrictive in determining what is proper for public welfare in the contest of zoning enactments. Justice Douglas, in writing the majority opinion for the United States Supreme Court in the case of

Belle Terre v. Boraas, ... U.S. ....., 94 S. Ct. 1536, 1539 (1974) citing the case of *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, stated that the court in that case refused to limit the concept of public welfare which can be enhanced by zoning regulations:

> "The concept of public welfare is broad and inclusive . . . The values it represents are spiritual as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled."

(Quoting from the *Berman* case at pp. 32-33 of 348 U.S.). The same principle has been recognized in the Common Pleas Court of Cuyahoga County in the case of *Nolden v. East Cleveland City Commission*, 12 Ohio Misc. 205, 210, 232 N.E.2d 421 (App. 1966). By reason of the above authorities it is clearly apparent that what is for the public welfare has been broadly interpreted by the courts in determining the validity of zoning enactments.

Even if the validity of the classification by the legislature for the purpose of zoning is fairly debatable, the judgment of the legislature will prevail. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S. Ct. 114 (1926). Also see *Cleveland Trust Co. v. Village of Brooklyn*, 92 Ohio App. 351.

It is also well established that a court will not substitute its judgment as to the wisdom of a zoning enactment for that of the legislature. *Cleveland Trust Co. v. Village of Brooklyn*, 92 Ohio App. 351, 359, 110 N.E.2d 440 (1952), *Pritz v. Messer*, 112 Ohio St. 628, 638-639, 149 N.E. 30 (1925).

The burden of proving that a zoning enactment is unreasonable and arbitrary, and therefore invalid, is upon

the party challenging it. *Pearce v. Youngstown*, 100 Ohio App. 22, 25, 135 N.E.2d 430 (1954). The evidence that a zoning regulation is unreasonable must be clear and satisfactory. *Peebles v. State*, 25 Ohio L. Abs. 545, 546 (App. 1937), *dismissed for want of debate* q. 133 Ohio St. 130 (1937).

The Court of Appeals of Ohio, Eighth District, in affirming the decision of the trial court in the instant case, noted that the Constitution of the State of Ohio, Section 3, Article XVIII states:

> "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Further the Court of Appeals, in the instant case held that:

> "Two reasons for enacting and enforcing Sec. 1341.08 are mentioned by counsel for East Cleveland in his brief: 1) to help alleviate traffic congestion, and 2) to lessen the possible financial burden on the city school system which would result from an inordinate number of school age children residing in a single dwelling which would consequently generate a disproportionately small real estate tax revenue per child.
>
> The defendant failed to present the trial court with any evidence to support her contention that Sec. 1341.08 is violative of the equal protection and due process clauses. Rather she rests on the assertion in her appellate brief, that the ordinance is unreasonable and arbitrary on its face. We disagree.

A municipal ordinance enacted pursuant to the legislative exercise of local police power is valid unless it clearly bears no real and substantial relation to public health, safety, morals or general welfare. *Benjamin v. City of Columbus* (1957), 167 Ohio St. 103; *Curtiss v. Cleveland* (1959), 170 Ohio St. 127.

As this court recently stated in syllabus 3 of *Alsenas v. City of Brecksville* (1972), 29 Ohio App. 2d 255:

> 'To prevail in such a case the complainant must also clearly establish that the ordinances he attacks do not bear a real and substantial relation to the public health, safety, morals or general welfare and are, in turn, unreasonable or arbitrary, that is, in substance, that the local legislative authority could not have reasonably believed or, in permitting such legislation to remain in force, cannot reasonably believe that the necessity of regulation in the public interest outweighs, qualitatively, the impact imposed on the individual property owner.'
>
> A duly enacted municipal ordinance is presumed to be constitutionally valid. The burden of establishing the unconstitutionality of such ordinance is upon the one challenging its validity. *Cleveland v. Antonio* (1955), 100 Ohio App. 334.
>
> Since the defendant presents no evidence to rebut the presumption of legislative validity, we find that Sec. 1341.08 bears a real and substantial relation to public health, safety or welfare and is, therefore valid. See *City of East Cleveland v. Palmer* (1974), 40 Ohio App. 2d 10."

In summary, zoning enactments are presumed to be valid and appellant has failed to prove that Section 1351.02 as interpreted by Section 1341.08, is unreasonable, arbitrary or not related to the public health, safety and welfare. The wisdom of the legislature in providing for the health, safety and welfare of the community should not be usurped by the judgment of a Court. Finally, what is within the public welfare for zoning purposes has been widely interpreted by the Courts, and in the present case clearly includes Section 1341.08 of the Ordinances of the City of East Cleveland.

4. Appellant has no standing to raise a constitutional question when the said appellant fails to exhaust timely her administrative remedies established by the enabling legislation.

The Codified Ordinances of the City of East Cleveland provides, in Chapter 1311, for appeals. Section 1311.03 of the Codified Ordinances provides the following:

1311.03 APPEAL PROCEDURE.

(a) Any person adversely affected by a decision of any City official made in the enforcement of any ordinance for which the Board of Building Code Appeals is designated as the Board of Appeals shall have the right to appeal to the Board of Building Code Appeals from such decision within ten days from the date notice of such decision was given or mailed to him, and to appear before the Board at a time and place fixed by the Board. Such appeal must be in writing. Failure to file a written appeal with the Board within the time prescribed shall constitute a waiver of the right of appeal. The Board shall have the power to approve, amend, modify or reverse any decision of such City official.

(b) Any person adversely affected by a decision of the Board of Building Code Appeals shall also have the right to appeal to the City Commission from such decision within ten days from the date notice of such decision was given or mailed to the appellant, and to appear before the City Commission at a time and place fixed by the City Commission. Such appeal must be in writing. Failure to file a written appeal with the City Commission within the time prescribed shall constitute a waiver of the right of appeal. The City Commission shall have the power to approve, amend, modify or reverse any decision of the Board. (Ord. 5636. Passed 6-1-65.)

It is clear from the record below that Appellant neither appealed the housing inspector's citation to the Board of Zoning Appeal nor did she lodge an appeal with the City Commission. Where the legislature has established a procedure for appealing adverse decisions, that administrative procedure must be exhausted before one can seek a court remedy. Thus, Appellant's failure to exhaust her administrative remedy, by failing to file a timely appeal, precludes this appeal because she lacks standing to make it.

SUMMARY

Even if the court decided that the ordinance in question presented a matter upon which the court might wish to rule, the instant case is not the type of case which should be given the consideration of this Court. Nowhere in the record is there any evidence by the Appellant to show that the ordinance is unreasonable or arbitrary.

The Appellant lacks standing before this court. The Appellee has shown a substantial relation to public health, safety, morals and general welfare.

Further Appellant has provided no evidence to rebut the presumption of the constitutionality of the ordinance.

The Supreme Court of Ohio found no substantial constitutional question.

The instant case involves an attempt to raise a constitutional issue which has been settled by the United States Supreme Court. We submit to this court that the facts in the within case do not justify a hearing of this case on the merits, and we respectfully request that the court deny the appeal.

CONCLUSION

For all the foregoing reasons, Appellee respectfully requests that the appeal be denied.

Respectfully submitted,

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